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**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 247**

**[FNS-2019-0006]**

**RIN 0584-AE66**

**Commodity Supplemental Food Program: Implementation of the Agriculture Improvement Act of 2018**

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Final rule.

**SUMMARY:** Through this final rule, the U.S. Department of Agriculture's (the Department or USDA) Food and Nutrition Service (FNS) is codifying a revised statutory requirement included in the Agriculture Improvement Act of 2018 (2018 Farm Bill). Section 4102 of the 2018 Farm Bill established new Commodity Supplemental Food Program (CSFP) certification requirements..

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Katie Treen, Program Analyst, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place Suite 3043, Alexandria, Virginia 22314, 703-305-2674 or email [katie.treen@usda.gov](mailto:katie.treen@usda.gov).

## **SUPPLEMENTARY INFORMATION:**

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## **I. Discussion of Final Rule**

This Final Rule codifies statutory requirements included in section 4102 of the Agriculture Improvement Act of 2018 (P.L. 115-334, the 2018 Farm Bill). Section 4102 established a statutory definition for the term “certification period” and established that certification periods for CSFP participants must be not less than one year and not more than three years. This final rule revises 7 CFR 247.16 to include this provision.

This rule also revises 7 CFR 247 per section 4102 of the Agriculture Act of 2014 (P.L. 113-79, the 2014 Farm Bill), which amended CSFP eligibility requirements and phased out individuals who do not meet the new requirements. This provision was implemented through a previous final rule, *Commodity Supplemental Food Program (CSFP): Implementation of the Agricultural Act of 2014* (79 FR 38748), published on July 9, 2014. As of February 2020, the phase out of individuals who are not eligible for CSFP

was completed. Thus this rule amends program regulations at 7 CFR part 247 to remove all remaining references to women, infants, and children.

Lastly, this rule amends citations that were revised during the previous final rule, *Requirements for the Distribution and Control of Donated Foods-The Emergency Food Assistance Program: Implementation of the Agricultural Act of 2014* (81 FR 23085), published on April 19, 2016, which amended Food Distribution regulations at 7 CFR part 250. Accordingly, 7 CFR part 247 will be amended to reflect any updated references to 7 CFR part 250.

The Administrative Procedures Act (APA) at 5 U.S.C. 553(a)(2) specifically exempts rules involving grants and benefits from notice-and-comment requirements, giving the Department the authority to issue final rules in grants and benefits programs, like CSFP. Therefore, the Department is issuing this rule as a final rule without a comment period.

## **II. Certification Periods**

### **A. Background**

Section 4102 of the 2018 Farm Bill establishes a statutory definition for the term “certification period” as “the period during which a participant in the commodity supplemental food program in a State may continue to receive benefits under the commodity supplemental food program without a formal review of the eligibility of the participant.” The “certification period” definition will be amended in 7 CFR 247.1 to reflect the statutory definition.

Additionally, Section 4102 of the 2018 Farm Bill codifies new statutory requirements for CSFP certification periods. Accordingly, FNS is amending CSFP program regulations at 7 CFR 247.16 to reflect the new requirements that certification periods for CSFP participants must be not less than one year and not more than three years. Prior to the enactment of the 2018 Farm Bill, program regulations stipulated that the State agency must establish certification periods that may not exceed six months in length. However, the State agency could authorize local agencies to extend the certification period without a formal review of eligibility for additional six-month periods, as long as the conditions outlined in 7 CFR 247.16(a)(2)(i) and (ii) were met.

This final rule makes the following conforming changes to 7 CFR 247.16(a): (1) establishes minimum certification periods to be no less than one year but no more than three years for program participants; (2) establishes that if the State agency chooses to establish a certification period that exceeds one year, the State agency must first receive approval from FNS by submitting an updated State Plan. Additionally, 7 CFR 247 is amended by removing all references to women, infants, and children, thus 7 CFR 247.16 is being reorganized.

Under the 2018 Farm Bill and updated program regulations, FNS shall approve a certification period exceeding one year on the condition that on an annual basis, local agencies administering CSFP do two things. Firstly, the local agency must verify the address and continued interest of the participant. Secondly, the local agency must have sufficient reason to determine that the participant still meets the income eligibility standards.

Furthermore, this final rule adds two sub-paragraphs to 7 CFR 247.16(a), in order to clarify 2018 Farm Bill statutory requirements. The first sub-paragraph, 7 CFR 247.16(a)(2), allows eligible CSFP applicants, including individuals on waiting lists, to be provided with a temporary monthly certification to fill any caseload slots resulting from nonparticipation by certified participants. The second sub-paragraph, 7 CFR 247.16(a)(3), establishes that should a State agency want to allow local agencies to continue providing benefits to individuals once their certification period expires, then individuals must be formally recertified following the application procedures outlined at 7 CFR 247.8.

The 2018 Farm Bill was signed into law on December 20, 2018. The Department determined that prolonging the implementation of this provision would negatively impact State agencies that administer CSFP by delaying their ability to utilize the new flexibility in certification periods. The Department also determined that this provision was self-executing and, therefore, implemented the provision immediately in FY 2019.

## **B. Implementation Memorandum**

On March 8, 2019, FNS released a memorandum titled, *CSFP – Implementation of the Agriculture Improvement Act of 2018* (P.L. 115-334), which set forth the changes to the certification period for CSFP participants. The memorandum defined the term “certification period” and directed CSFP States agencies to establish new certification periods that are not less than one year but not more than three years. The memorandum instructed CSFP State agencies and ITOs to amend their State Plans and submit them to FNS for review and approval by May 1, 2019. The memorandum required the State Plan

amendments to outline the length of the State agency's new certification periods for participants and the procedures for implementation among CSFP local agencies. Lastly, the memorandum notified State agencies that they may permit their local agencies to certify individuals for one-month periods to maximize caseload use and provide temporary CSFP benefits to participants on waiting lists when a regular program participant misses a scheduled distribution.

### **III. Phase out of Women, Infants, and Children**

Section 4102 of the 2014 Farm Bill amended CSFP eligibility requirements to transition it to a seniors-only program and phase out ineligible participants. Women, infants, and children who were certified and receiving CSFP benefits as of February 2014 under existing program rules, received assistance until they were no longer eligible under the program rules that went into effect on February 6, 2014. On July 9, 2014, FNS published a final rule implementing this provision. All ineligible participants have since phased out of CSFP. This rule amends program regulations at 7 CFR 247 to remove all references to women, infants, and children and to make conforming organizational changes within 7 CFR part 247.

### **IV. Technical Correction**

This rule amends citations that were revised during previous rulemaking. On April 19, 2016, the Food Distribution Division published a final rule, *Requirements for the Distribution and Control of Donated Foods-The Emergency Food Assistance Program: Implementation of the Agricultural Act of 2014* (81 FR 23085), which amended Food

Distribution regulations at 7 CFR part 250. Accordingly, this rule amends 7 CFR 247 to reflect any updated references to 7 CFR part 250 as a result of previous rulemaking.

## **V. Procedural Matters**

### **Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

### **Executive Order 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been determined to be not significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

### **Regulatory Impact Analysis**

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. This final rule would not have an impact on small entities because the revised requirement provides more flexibility on the certification period at the local agency level. This lessens the administrative burden previously required by allowing State agencies to extend their certification periods from six months to one to three years.

### **Executive Order 13771**

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. This final rule is an EO 13771 deregulatory action. This rulemaking provides a reduction in the State agency/ITO requirements to certify CSFP participants on an annual basis. This rule lessens the administrative burden previously required by allowing State agencies to extend their certification periods from six months to one to three years.

### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory



actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written Statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of \$146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at <http://www.bea.gov/iTable>) in any one year. When such a Statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of \$146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### **Executive Order 12372**

The program is listed in the Catalog of Federal Domestic Assistance under Number 10.558 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

### **Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a Statement for inclusion in the preamble to

the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact Statement is not required.

### **Executive Order 12988, Civil Justice Reform**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation.

### **Civil Rights Impact Analysis**

FNS has reviewed this final rule in accordance with USDA Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to have any civil rights impacts or affect the overall level of participation in CSFP.

### **Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy Statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. USDA is unaware of any current Tribal laws that could be in conflict with this rule.

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this final rule contains information collections that are subject to review and approval by the Office of Management and Budget. The provisions discussed in this Final Rule are non-discretionary statutory requirements provided in the 2018 Farm Bill, therefore the Department did not publish a proposed rule with a public comment period for these provisions. However, since some of the provisions contained in this Final Rule have Paperwork Reduction Act (PRA) implications, the Food and Nutrition Service (FNS) is embedding a 60-Day Notice in this Final Rule to request public comments on these provisions. FNS is only requesting comments on the specific PRA implications resulting

from this rule; the agency is not requesting comments on the rule itself. The Final Rule will be effective upon publication. The PRA requirements discussed in this rule, with their associated burden, will not be effective until OMB has reviewed and approved the Information Collection Request (ICR) associated with this Final Rule. FNS plans to prepare and submit the ICR after the due date for public comments has passed and FNS has analyzed the comments.

When the information collection requirements have been approved, the Department will publish a separate action in the Federal Register announcing OMB approval.

Title: Food Distribution Programs

OMB Number: 0584-0293

Expiration Date: July 31, 2023

Type of Request: Revision of a Currently Approved Collection

Abstract: This Final Rule codifies statutory requirements included in section 4102 of the Agriculture Improvement Act of 2018 (P.L. 115-334, the 2018 Farm Bill). Section 4102 of the 2018 Farm Bill established a statutory definition for the term “certification period” and established that certification periods for the Commodity Supplemental Food Program (CSFP) participants must be not less than one year and not more than three years.

Additionally, this rule also revises 7 CFR part 247 per section 4102 of the Agriculture Act of 2014 (P.L. 113-79, the 2014 Farm Bill), which amended CSFP eligibility requirements to phase out the participation of pregnant, breastfeeding and postpartum women, infants, and children (referred generally throughout this section as women, infants, and children), transitioning the CSFP to a seniors-only program. This provision

was implemented through a previous final rule, *Commodity Supplemental Food Program (CSFP): Implementation of the Agricultural Act of 2014* (79 FR 38748), published on July 9, 2014. The 2014 Farm Bill language was clear and mandatory, leaving no room for discretion. This action was finalized without prior notice or public comment under the authority of 5 U.S.C. 553(a)(2). As of February 2020, the phase out of all women, infants, and children was completed.

#### State Agencies

This final rule requires some State agencies to amend their State Plans to include the new certification period. Only those State agencies extending their current certification period longer than one year need to make an amendment. The Department believes that an additional fifteen minutes (0.25 hours) should be added to the current 5-hour burden estimate in the currently approved OMB Control Number 0584-0293 Food Distribution Programs, Expiration Date: 7/31/2023, to support State Plan amendments resulting from this change. Going forward, only those State agencies extending their certification period longer than one year will need to make amendments to their State Plans. The initial amendment to the State Plan is a one-time change and State agencies will not have to submit additional information going forward, if they choose to continue in subsequent years with their current certification period. State agencies will only have to submit a State Plan amendment in future years if they decide to change their certification period. The Department estimates that it will take fifteen minutes of a State agency staff person's time to prepare and send this information to FNS if making a change to their certification period. Per current estimates under State Plan Amendments at 7 CFR 247.6(d), under State Agency reporting in OMB Control Number 0584-0293 Food Distribution Programs,

Expiration Date: July 31, 2023, approximately 40 State agencies typically make amendments to their State Plans on an annual basis. FNS believes that this change may result in approximately five additional State agencies submitting State Plan amendments to change their certification periods each year going forward. Accordingly, we are adding an additional 36.25 burden hours to cover future years in the event a State agency decides to adjust their certification period.

### Individuals

Currently FNS has approval under OMB Control Number 0584-0293 for individuals applying and certifying for CSFP. The individuals are broken into two groups, the elderly and women, infants, and children. CSFP certification periods for all CSFP participants are under 7 CFR 247.16. The currently approved collection includes 7,500 total burden hours for the application and recertification of women, infants, and children. The 2014 Farm Bill allowed women, infants, and children who were participating in the program on the date the law was enacted to continue on the program until their eligibility expired under the program rules in effect on that date. As of February 2020, all women, infants, and children have been phased out of the program, thus the burden for the application and recertification for these individuals needs to be removed from the collection.

As a result of the phase out of this population from CSFP, these 7,500 caseload slots have been reallocated to the population of elderly CSFP participants. Additionally, CSFP participation has increased in recent fiscal years (FY) due to the additional availability of program resources. In FY 2019 CSFP average annual participation was approximately 702,500. Therefore, FNS finds it reasonable to adjust the estimated number of elderly

individuals to 702,500 for the application (7 CFR 247.8) and recertification (7 CFR 247.16) of elderly individuals. Per the final rule at 7 CFR 247.16, CSFP participants must provide verification to their local agency on an annual basis, regardless of the certification period that the State agencies impose on the local agencies. Therefore, elderly participants will provide information once per year, reducing the estimated responses from two to one. FNS estimates that this yearly contact will continue to take 15 minutes. The updated estimated burden for CSFP individuals is 175,625, which is a decrease of 110,875 from the previously approved burden of 286,500.

The following table reflects the burden associated with this rule in the existing burden collection in accordance with the Paperwork Reduction Act.

Affected public: State agencies

Estimated number of respondents: 45

Estimated total annual response per respondent: 1

Estimated total annual responses: 45

Estimated time per respondent: 5.25

Estimated Total Annual Burden on Respondents: 236.25

Affected public: CSFP Participants

Estimated number of respondents: 702,500

Estimated total annual response per respondent: 1

Estimated total annual responses: 702,500

Estimated time per respondent: 0.25

Estimated Total Annual Burden on Respondents: 175,625

Total Reporting Hours Resulting from Proposed Rule: 175,861

Currently Approved Burden Hours in OMB# 0584-0293: 1,161,377

Estimated Burden Hours Including Hours from Final Rule: 1,043,038

Burden Hour Difference: -118,339



Sec. of Regs/ Authority	Respondent Type	Title	Est. No. of Respondents	Est. No. of Responses per Respondent	Total Annual Responses	Est. Total Hours per Response	Est. Total Burden	Currently Approved Burden	Program Change due to Rule making	Adjustment	Net Change
Affected Public: State Agencies											
247.6(d)	State agency	State Plan Amendment	45	1	45	5.25	236.25	200	36.25	0	36.25
Affected Public: Individuals											
247.8 & 247.16(a)	Elderly	Applications/ Recertification	702,500	1	702,500	0.25	175,625	286,500	-110,875	0	-110,875
247.8 & 247.16(a)	Women, infants and children	Applications/ Recertification	0	0	0	0	0	7,500	-7,500	0	-7,500
Individual Total			702,500	1	702,500	0.25	175,625	294,000	-118,375	0	-118,375
Total Reporting			702,545	1	702,545	0.25	175,861	294,200	-118,339		-118,339

	Est. No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Est. total Hours per Response	Est. total Burden	Currently approved burden # 0584-0293	Change in burden
<b>Reporting</b>	752,675.00	2.42	1,824,554.57	0.15	272,291.13	390,630	-118,339
<b>Recordkeeping</b>	26,970.00	56.3	1,518,341.46	0.51	770,747.03	770,747.03	0
<b>TOTAL</b>	<b>752,675.00</b>	<b>4.44</b>	<b>3,342,896.03</b>	<b>0.31</b>	<b>1,043,038.16</b>	<b>1,161,377.03</b>	<b>-118,339</b>

## **E-Government Act Compliance**

The Department is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

## **List of Subjects in 7 CFR Part 247**

Definitions, Purpose and Scope, Agreements, State and local agency responsibilities, State Plan, Individuals applying to participate in CSFP, Rights and responsibilities, Other public assistance programs, Certification period, Nutrition education, Dual participation, Allowable uses of administrative funds and other funds, Storage and Inventory of commodities, Reports and recordkeeping, and Claims.

Accordingly, 7 CFR part 247 is amended as follows:

### **PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM**

1. The authority citation for part 247 continues to read as follows:

Authority: Sec. 5, Pub. L. 93-86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97-98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98-8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98-92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99-198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100-202; sec. 1771(a), Pub. L. 101-624, 101 Stat. 3806 (7 U.S.C. 612c note); sec 402(a), Pub. L. 104-127, 110 Stat. 1028 (7 U.S.C. 612c note);

sec. 4201, Pub. L. 107-171, 116 Stat. 134 (7 U.S.C. 7901 note); sec. 4221, Pub. L. 110-246, 122 Stat. 1886 (7 U.S.C. 612c note); sec. 4221, Pub. L. 113-79, 7 U.S.C. 612c note).

2. In §247.1:

- a. Remove the definitions of “Breastfeeding women,” “Children,” “Infants,” “Postpartum women,” and “WIC Program.”
- b. Revise the definitions “Certification Period,” and “Dual participation”.

The revisions read as follows:

**§247.1 Definitions.**

\* \* \* \* \*

Certification period means the period during which a CSFP participant may continue to receive benefits under CSFP without a formal review of eligibility.

\* \* \* \* \*

Dual participation means the simultaneous participation by an individual in CSFP at more than one distribution site.

\* \* \* \* \*

**§247.2 [Amended]**

3. In §247.2(a), remove the third sentence.

**§247.4 [Amended]**

4. In paragraph §247.4(d), remove “§250.12(c)” and add in its place “§250.4” and in the last sentence add the word “into” after the word “entering”.

**§247.5 [Amended]**

5. In §247.5 (b)(8), remove “and with the WIC State agency, unless no women, infants, and children remain enrolled in CSFP in the State”
6. In §247.6:
  - a. In paragraph (c)(2), remove the phrase “to be used for women, infants, and children, if applicable,”.
  - b. In paragraph (c)(8), remove “, including, if applicable, collaboration with the State WIC agency and a copy of the agreement signed with the State WIC agency to accomplish this”.
  - c. Add paragraph (c)(12).

The revision reads as follows:

**§247.6 State Plan.**

\* \* \* \* \*

(c) \* \* \*

(12) The length of the State agency’s certification period.

\* \* \* \* \*

7. In §247.8:
  - a. Revise paragraph (a); and

- b. Amend paragraph (b) by removing “I may not receive both CSFP and WIC benefits simultaneously, and”.

The revision should read as follows:

**§247.8 Individuals applying to participate in CSFP.**

(a) *What information must individuals applying to participate in CSFP provide?* To apply for or to be recertified for CSFP benefits, the applicant or caretaker of the applicant must provide the following information on the application:

- (1) Name and address, including some form of identification for each applicant;
- (2) Household income;
- (3) Household size; and
- (4) Other information related to eligibility, such as age

\* \* \* \* \*

8. Revise §247.9 to read as follows:

**§247.9 Eligibility requirements.**

(a) *Who is eligible for CSFP?* To be eligible for CSFP, individuals must be at least 60 years of age and meet the income eligibility requirements outlined in paragraph (b) of this section.

(b) *What are the income eligibility requirements for CSFP applicants?* The State agency must use a household income limit at or below 130 percent of the Federal Poverty Income Guidelines. Elderly persons in households with income at or below this level must be considered eligible for CSFP benefits (assuming they meet other requirements

contained in this part). However, elderly persons certified before September 17, 1986 (i.e., under the three elderly pilot projects) must remain subject to the eligibility criteria in effect at the time of their certification.

*(c) When must the State agency revise the CSFP income guidelines to reflect the annual adjustments of the Federal Poverty Income Guidelines?* Each year, FNS will notify State agencies, by memorandum, of adjusted income guidelines by household size at 130 percent and 100 percent of the Federal Poverty Income Guidelines. The memorandum will reflect the annual adjustments to the Federal Poverty Income Guidelines issued by the Department of Health and Human Services. The State agency must implement the adjusted guidelines immediately upon receipt of the memorandum.

*(d) How is income defined and considered as it relates to CSFP eligibility?* (1) Income means gross income before deductions for such items as income taxes, employees' social security taxes, insurance premiums, and bonds.

(2) The State agency may exclude from consideration the following sources of income listed under the regulations for the Special Supplemental Nutrition Program for Women, Infants, and Children at §246.7(d)(2)(iv) of this chapter:

- (i) Any basic allowance for housing received by military services personnel residing off military installations; and
- (ii) The value of inkind housing and other inkind benefits.

(3) The State agency must exclude from consideration all income sources excluded by legislation, which are listed in §246.7(d)(2)(iv)(D) of this chapter. FNS will notify State agencies of any new forms of income excluded by statute through program policy memoranda.

(4) The State agency may authorize local agencies to consider the household's average income during the previous 12 months and current household income to determine which more accurately reflects the household's status. In instances in which the State makes the decision to authorize local agencies to determine a household's income in this manner, all local agencies must comply with the State's decision and apply this method of income determination in situations in which it is warranted.

*(e) What other options does the State agency have in establishing eligibility requirements for CSFP?* (1) The State agency may require that an individual be at nutritional risk, as determined by a physician or by local agency staff.

(2) The State agency may require that an individual reside within the service area of the local agency at the time of application for CSFP benefits. However, the State agency may not require that an individual reside within the area for any fixed period of time.

9. In §247.12, revise paragraph (a)(2) to read as follows.

**§247.12 Rights and responsibilities.**

(a) \* \* \*

(2) The local agency will make nutrition education available to all participants and will encourage them to participate; and

\* \* \* \* \*

**§ 247.14 [Amended]**

10. In §247.14:

a. Remove paragraph (a) and redesignate paragraphs (b) and (c) as (a) and (b).

- b. In newly redesignated paragraph (a) introductory text, remove the word “elderly” wherever it appears.
- c. In newly redesignated paragraph (a)(3), remove “Food Stamp” and add in its place “Supplemental Nutrition Assistance”.

11. In §247.16, revise paragraph (a) to read as follows:

**§247.16 Certification period.**

(a) *How long is the certification period?* (1) *Minimum certification period.* The State agency must establish certification periods that are not less than one year but not more than three years in duration. If the State agency chooses to establish a certification period that exceeds one year, the State must first receive approval from FNS by submitting a State Plan amendment. FNS shall approve State requests for a certification period exceeding one year on the condition that, on an annual basis, local agencies do the following:

- (i) Verify the address and continued interest of the participant; and
- (ii) Have sufficient reason to determine that the participant still meets the income eligibility standards, which may include a determination that the participant has a fixed income.

(2) *Temporary certification.* An eligible CSFP applicant, including individuals on waiting lists, may be provided with a temporary monthly certification to fill any caseload slot resulting from nonparticipation by certified participants.



(3) *Recertification*. Participants must be recertified following the application procedures outlined at §247.8 in order to continue receiving program benefits beyond the expiration of their certification period.

\* \* \* \* \*

#### **§247.18 [Amended]**

12. In §247.18:

- a. Remove paragraph (b)(4) and redesignate paragraphs (b)(5) and (6) as (b)(4) and (5).
- b. Amend paragraph (c) by removing the word “adult” before “participants” and removing, “and, if applicable, to parents or caretakers of infant and child participants. Local agencies are encouraged to make nutrition education available to children, where appropriate”

13. In §247.19, am:

Amend paragraph (a) by revising the first sentence and paragraph (b) to read as follows: **§247.19 Dual participation.**

(a) *What must State and local agencies do to prevent and detect dual participation?* The State agency must work with local agencies to prevent and detect dual participation. \* \* \*

(b) *What must the local agency do if a CSFP participant is found to be committing dual participation?* A participant found to be committing dual participation must be discontinued from participation at more than one CSFP site. In accordance with

§247.20(b), if the dual participation resulted from the participant or caretaker of the participant making false or misleading statements, or intentionally withholding information, the local agency must disqualify the participant from CSFP, unless the local agency determines that disqualification would result in a serious health risk. The local agency must also initiate a claim against the participant to recover the value of CSFP benefits improperly received, in accordance with §247.30(c). Whenever an individual's participation in CSFP is discontinued, the local agency must notify the individual of the discontinuance, in accordance with §247.17. The individual may appeal the discontinuance through the fair hearing process, in accordance with §247.33(a).

**§247.25 [Amended]**

14. In §247.25(f), remove “§250.15(c)” and add in its place “§250.17(c)”..

**§ 247.28 [Amended]**

15. In §247.28(a), remove “under” and add in its place “in §250.12 and”.

**§247.29 [Amended]**

16. In §247.29, amend paragraph (b)(2)(i) by removing “in each population category (e.g., infants, children, and elderly)”.

**§ 247.30 [Amended]**

17. In §247.30(b), remove “§250.15(c)” in the first place it appears and add in its place “§250.16(a)”, and remove “§250.15(c)” in the second place it appears and add in its place “§250.17(c)”.

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